

MEMORANDUM

March 2, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: COLLINS, COLLINS MUIR & STEWART, LLP
TOMAS A. GUTERRES

RALPH L. ROSATO
Principal Deputy County Counsel
Social Services Division

RE: Destney O./Jeffrey L. vs. County of Los Angeles
Los Angeles Superior Court Case No. BC252123

DATE OF
INCIDENT: May 5, 2000

AUTHORITY
REQUESTED: \$64,500

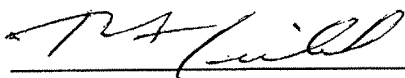
COUNTY
DEPARTMENT: Department of Children and Family Services

CLAIMS BOARD ACTION:

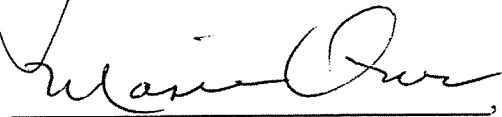
☒ Approve

☐ Disapprove

☐ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY A. ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on March 20, 2006

SUMMARY

The plaintiffs are minors, Jeffrey L. and Destney O., who allege they were negligently cared for in placement and that their civil rights were violated by the actions of the Department of Children and Family Services' ("Department") employees.

Both children were removed from their home when Jeffrey L. was born drug dependent. Destney O. alleges that she was improperly placed in and involuntarily held in a facility for non-ambulatory, non-verbal patients. Jeffrey L. alleges his medical needs were improperly met while he was placed in the foster home of Kevin Pernell. Both children claim their emotional/psychological development was stunted due to the above placements and due to the fact that they were denied visitation with each other and other family members.

LEGAL PRINCIPLES

A public entity is responsible for the negligent acts of its employees when the acts are done in the course and scope of employment.

When a duty imposed by court order, statute, regulation or Department policy is not performed by a public entity or its employees, such failure to perform constitutes a breach of a mandatory duty by the public entity, which supports its liability for the resulting harm.

A public entity's policy that when carried out results in deliberate indifference to an individual's needs supports a cause of action for violation of civil rights pursuant to 42 U.S.C. section 1983.

FACTS

On May 14, 1998, the Riverside County Juvenile Court terminated its jurisdiction and returned Destney and her 4 siblings to their mother. The family's history with the Riverside County Juvenile Court had been due to the mother's substance abuse problem.

Unfortunately, this problem resurfaced on November 13, 1998, when the mother gave birth to Jeffrey L. in Los Angeles County, and both the mother and child screened positive for cocaine. Jeffrey was detained on November 14, 1998 by the Department when it was determined the mother's drug use endangered Jeffrey and his siblings. Upon his discharge from the hospital on November 15, 1998, Jeffrey was assessed to be a special needs child requiring an F-rate of \$4,688.00 per month, and placed in an Emergency Shelter, the Bienvenidos Village for Children.

On December 22, 1998, he was removed from Bienvenidos and placed in the medical foster home of Kevin Pernell with a basic rate of \$375 per month. On December 24, 1998, Dr. Mayo R. DeLilly III, M.D., diagnosed Jeffrey with reactive airway disease/wheezing, respiratory difficulties, suspended seizure disorder, nystagmoid movement of the eyes, subdural effusion and a heart murmur.

On January 19, 1999, because the mother's substance abuse remained unresolved, Destney and her other siblings were taken into custody by the Department, and Destney was placed in the foster home of Vera Mallet.

Thereafter, on March 12, 1999, Destney was assessed as medically fragile and moved to the medical foster home of Kimberly Burgess. However, on April 29, 1999, Ms. Burgess brought Destney to All Saints Healthcare ("All Saints"), a licensed pediatric subacute care unit. Ms. Burgess informed All Saints that her license was about to expire; that she had chosen not to renew it; and that Destney needed 24 hour a day care, which was too stressful for her to provide.

On May 3, 1999, an All Saints' physician diagnosed Destney with severe obstructive sleep apnea syndrome, a tracheotomy, ventriculo-septal defect (holes in the heart), and possible chronic heart failure.

On May 6, 1999, the Los Angeles County Juvenile Court ordered that custody of the plaintiffs be taken from their parents, and that they be placed in care of the Department for suitable placement. Additionally, the Court ordered that sibling visitation occur once a month and that Jeffrey and Destney be placed in the same medical placement home, "if possible." Department records show that Mr. Pernell was resistant to the visitation order and that visits between Destney and her siblings did not take place for approximately 15 months.

On or about May 6, 1999, All Saints notified the Department's social worker that Destney was medically stable and ready to be released and that All Saints could and would provide the appropriate training to a prospective foster parent to properly care for Destney. The social worker was also notified that All Saints was not an appropriate placement for Destney since all of her peers were non-ambulatory and non-verbal. Destney's dependency attorney testified that she was given the same information by All Saints and had relayed that information to the social worker. The same attorney also testified that she was told by the social worker that Destney's case had been handed off several times and "fell in the cracks."

The Department, while acknowledging that Destney had at least three assigned social workers, contends that there were no medically approved placements with appropriately trained foster parents available. And, while All Saints may not have been the "best" placement for Destney, her stay there was not detrimental or harmful.

On or about December 28, 1999, the Juvenile Court ordered the Department to find, train and place Destney in an appropriate foster home no later than February 8, 2000 (six months after All Saint's approval of her medical discharge).

On May 4, 2000, the Court appointed Special Advocate and Guardian ad Litem, Ms. Harriett Zaretsky, reported to the Juvenile Court that "...Jeffrey was always left sitting in his infant seat and not getting held or moved during her visits." Also on May 4, 2000, the Department's social worker, Jaymee Poblette, reported that "there had not been any sibling visits for Jeffrey and other siblings and that she is considering finding a more stimulating environment for Jeffrey to help increase [his progress] with regard to his developmental delays."

Jeffrey was removed from Mr. Pernell's home on May 4, 2000 pursuant to court order. Destney was not removed from All Saints until May 5, 2000. Again, there were issues finding an appropriate medical placement and also with moving the medical equipment necessary for Destney's care.

There is also an issue whether the social workers made the required visitations, had appropriate and timely case plans for the children, and whether the "policy" of allowing social workers to transfer cases to ensure caseload parity resulted in the alleged "improper" monitoring and supervision of Destney and Jeffrey during the 1999 to 2000 time period and whether the policy fostered deliberate indifference to the needs of these children.

DAMAGES

Plaintiffs claim non-economic and economic damages against the County of Los Angeles, which include psychological counseling, now and in the future, loss of earning capacity and compensatory damages for pain and suffering. Plaintiffs have retained the services of a team of psychologists from UCLA that would testify to an ongoing need for treatment of both plaintiffs. In addition, a verdict on the Civil Rights claim, even for \$1.00, would support an attorneys fees award that could be \$150,000 or more.

STATUS OF CASE

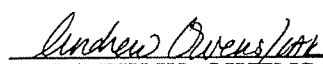
Expenses incurred by the County in defense of this action include attorneys fees of \$139,000 and \$12,305 in costs. A Motion for Summary Judgment was denied and the case was set for trial on March 20, 2006.

EVALUATION

Given the negative reports by independent witnesses as to the alleged "improper" placement of both Destney and Jeffrey, coupled with the fact that the Department: 1) did not remove Destney or Jeffrey from their placements for more than a year after it should have known the placements were inappropriate, 2) missed a number of mandatory visits, 3) failed to provide sibling visitations to Destney, and 4) failed to comply with court orders directly affecting both the plaintiffs' care and placement; we believe that a jury would likely find that the Department failed to meet mandatory duties and, thus, acted negligently to plaintiffs' detriment. And, of even greater concern, a jury may find that the Department's "policy" of allowing social workers to transfer cases to ensure caseload parity resulted in "deliberate indifference" to the needs of these particular minors, leading to an award of damages for violating the plaintiffs' civil rights and for attorneys fees.

We join with our private counsel, Collins, Collins, Muir & Stewart, LLP and our third party administrator, Carl Warren and Company, in recommending this settlement. The Department of Children and Family Services concurs in the recommendation.

APPROVED:



ANDREW W. OWENS
Assistant County Counsel
Social Services Division

AWO:RLR:jv